

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sheikh
Mahomed Jan v. Munshi Ganga Bishun
Singh and others, from the High Court of
Judicature at Fort William in Bengal;
delivered the 28th February 1911.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY SIR ARTHUR WILSON.]

This is an Appeal from a decision of the High Court, Calcutta, overruling that of the Subordinate Judge of Chapra. The object of the suit, as brought by the Plaintiff and now Appellant, was to set aside a Revenue Sale, and to recover possession of the property sold. The Defendants were the purchaser and others who derived title from him. In the First Court the decision was in favour of the Plaintiff upon grounds which it is unnecessary now to examine.

From that decision there was an Appeal to the High Court, and that Court overruled the decision of the First Court. Various grounds were urged on the one side and on the other, on the argument of that Appeal, all of which were dealt with by the learned Judges in their Judgment, but of all those grounds, there is

only one which it appears to their Lordships necessary now to consider.

The facts, so far as it is necessary to examine them at the present stage, can be shortly stated. The property in question is an ijmalī kalam, forming part of the Mahal Bhawaspur. That property was put up for sale by the Collector of Chapra on the 16th September 1901, in respect of arrears of revenue, but as no bidder offered, the Collector stopped the sale, and declared that the whole estate would be put up to sale at a later date, acting under Section 14 of the Revenue Sale Law (Act XI. of 1859).

On the 17th September 1901, the Plaintiff (as permitted by Section 14 already referred to) paid the arrears due, and was declared the purchaser of the ijmalī kalam. He did not, however, receive his sale certificate until the 8th February 1902. In the meantime, between the sale and the sale certificate, kists of revenue became payable in respect of the property in September 1901 and in January 1902.

On the 13th January 1902 the purchaser, the Plaintiff Appellant, paid in to the Treasury a sum of Rs. 73, appropriating that payment in the document which accompanied the payment to the Government to the January kist, and the payment was received and accepted on that account. Subsequently, however, the officers of the Treasury appropriated the sum paid, in the first place to the satisfaction of the September 1901 kist, and then, as far as the money would go, towards the January 1902 kist, the result being, according to this method of accounting, to leave a sum of Rs. 16. 12. 2. still due in respect of the January kist.

Subsequently, on the 26th March 1902, the Collector put up the property for sale in respect of the amount so appearing due of the January kist.

The only point which their Lordships think it necessary to dispose of on the present Appeal is, whether the amount of the January kist in respect of which the sale was made was really due at the time of the sale, and whether therefore there was any legal power to sell.

Much was said in the argument about the bearing upon the present case of certain provisions of the Contract Act, relating to the appropriation of payments. Those enactments might perhaps have had a bearing upon the case, if the parties had not by their own actions placed the matter beyond doubt.

The money in question in the present case was expressly paid to satisfy the January kist, and it was received and acknowledged on that account. It requires no statutory provision to show that when money has been so paid and received and appropriated, it is not in the power of one of the parties to the transaction, without the assent of the other, to vary the effect of the transaction by altering the appropriation in which both originally concurred.

For these reasons their Lordships are of opinion that no arrears in respect of the January kist were due at the date of the sale, and that therefore the sale was without jurisdiction. Accordingly they will humbly advise His Majesty that the Judgment and Decree of the High Court should be set aside and that of the Subordinate Judge restored, with costs in both Courts.

The Respondents will pay the costs of this Appeal.

In the Privy Council.

SHEIKH MAHOMED JAN

v.

MUNSHI GANGA BISHUN SINGH
AND OTHERS.

LONDON :
PRINTED BY FYRE AND SPOTTSWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.
